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No. 82-955

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1982

ISABEL WOOD AND JONATHAN L. HAAS
PETITIONERS
v.
CHARLES H. LEIST, JR. AND LAURA N. LEIST,
ROBERT E. JONES, JR. AND MARILYN JONES
HUGH W. HULL AND LYNN HULL
RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

# BRIEF IN OPPOSITION FOR RESPONDENTS JONES

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Respondents, Robert and Marilyn Jones, respectfully request that the Court deny the Petition for Writ of Certiorari, seeking review of the decision by the United States Court of Appeals for the Ninth Circuit. A copy of

the unpublished Memorandum Decision of the Court of Appeals was included in the appendix of the Petitioners' brief.

## QUESTIONS PRESENTED

The questions presented by the Petitioners in this matter are improperly framed as whether the Court of Appeals for the Ninth Circuit, apparently through the issuance of its Memorandum Decision, denied Petitioners their civil rights. Such an issue, even were it present in this case, is not appropriately raised through a Petition for Writ of Certiorari. Framed more accurately, the questions presented by Petitioners for review to this Court, as presented to the Court of Appeals, are as follows:

1. Did Petitioners state a valid cause of action pursuant to 42 U.S.C. §§ 1985(2) & 1985(3) arising out of conduct occurring in connection with a state court proceeding when the necessary class-based, invidiously discriminatory animus was lacking?

2. Can Petitioners state a valid cause of action pursuant to 42 U.S.C. § 1983 when neither of the Petitioners was deprived of a right secured by the Constitution or laws of the United States?

## STATEMENT OF THE CASE AND FACTS

The factual setting out of which Petitioners' claim arose, and the course of proceedings below, are more than adequately set forth in the Memorandum Decision of the Court of Appeals. Respondents are compelled to observe, however, that in many instances, Petitioners' statement of the facts and the case include misleading statements that do not have, and never have had, support in the record.

Throughout this litigation, Petitioners have failed to separate the alleged acts of each of the Respondents and view them in their individual capacities. For example, Respondents Jones and Hull, who were two of the attorneys involved in the underlying state court litigation, have consistently been treated by Peti-

tioners as prime actors in the alleged conspiracy. The fact of the matter is that there has never been any allegation against these attorneys other than the conclusory statement that they were told of the valid outstanding warrant against Petitioner Haas prior to his arrest.

Petitioners also indulge in considerable departure from the record created below. For example, on pages 23 and 24 of their brief, Petitioners claim, without geographic or chronological limitation, that there is a widespread practice of police misconduct involving improper arrests of potential witnesses. Petitioners go on to describe an incident of unknown origin, time, place, or circumstances, when a defense witness in a criminal trial was removed from a courtroom, apparently on a valid warrant, for failure to pay child support. This unsupported allegation makes its first appearance in the Petitioners' brief, and is wholly without support in the record.

A similar situation pertains to Petitioners' arguments and factual assertions re-

garding the Haas arrest warrant. In their brief, Petitioners admit that the police computer showed the warrant as outstanding. They futher admit that a warrant for Haas' arrest was in fact issued because the copy they apparently possess states "NO BAIL" on its face.[1/] These admissions establish that there was, in fact, a facially valid and outstanding warrant for Haas' arrest.

REASONS WHY THE WRIT SHOULD BE DENIED

1. Petitioners have not demonstrated reasons, of the character required by Rule 17, why a Writ of Certiorari should be granted.

In seeking review by this Court on a Writ of Certiorari, it is incumbent on the Petitioners to demonstrate "special and important reasons" for the Court to issue the requested writ. United States Supreme Court Rule 17 sets forth a series of considerations which indicate

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1/ Petitioners assumption regarding what this statement on the face of the warrant means has no support in the record or otherwise.

the character of cases that are of sufficient moment for this Court to accept review. Petitioners have failed to demonstrate that any of the considerations found in Rule 17 apply in this case.

The Petitioners have not shown, nor have they attempted to show, that the Memorandum Decision of the Court of Appeals for the Ninth Circuit is in conflict with any of its other decisions, or the decisions of any other circuit. Nor have the Petitioners demonstrated that the Court of Appeals decision is in conflict with any applicable decisions of this Court.

Quite to the contrary, Petitioners acknowledge that with respect to their claims under 42 U.S.C. §§ 1985(2) & 1985(3), the Court of Appeals properly applied this Court's holding in Griffin v. Breckenridge, 403 U. S. 88 (1971), and instead urge the Court to now reconsider, or overrule, that sound decision.

With respect to their claim based on 42 U.S.C. § 1983, the Petitioners would also

have this Court overrule the sound reasoning of Baker v. McCollan, 443 U. S. 137 (1979) and grant them a federal cause of action even when an arrest is based on a facially valid warrant.

In its Memorandum Decision, the Court of Appeals has not decided any important question of federal law not previously decided by this Court. The Court of Appeals merely applied previous decisions of this Court and did so correctly.

The Court of Appeals itself perceived this case's lack of public or precedential import. Instead of issuing a published opinion on the matter, it filed a Memorandum Decision. Under Rule 21(b), Rules of the United States Court of Appeals for the Ninth Circuit, a Memorandum Decision is appropriate only when the case presents no legal issues of unique interest or substantial public importance and does not establish, modify, clarify or criticize an existing rule of law. It is submitted that the Court of Appeals correctly viewed Petitioners'

appeal as one appropriate for such an unpublished disposition.

The essence of Petitioners' position before this Court is that they disagree with the decisions rendered below and contend that they do have a federal cause of action based upon the facts stated. This disagreement, of interest only to the parties, simply does not demonstrate features of compelling public importance that make cases appropriate for review by certiorari. NLRB v. Pittsburg S.S. Co., 340 U.S. 498 (1951).

Petitioners attempt to suggest that there is some parallel between their case and Rutledge v. Arizona Board of Regents, 660 F.2d 1345 (9th Cir. 1981), cert. granted, 73 L.Ed.2d 1382 (1982), that would require this Court to also grant certiorari here. However as noted by the Court of Appeals in its Memorandum Decision, the Rutledge case involves allegations of a conspiracy to obstruct justice in the federal courts. There is a split among the circuits whether class-based invidiously discrim-

inatory animus is required for 42 U.S.C. § 1985(2) actions arising out of events occurring in connection with federal court matters and certiorari was granted to resolve that dispute. See the Memorandum Decision, footnote 3, page 19a of the appendix in Petitioners' brief. No such issue is even claimed to be presented here.

With respect to alleged conspiracies involving state court proceedings, which is the situation presented here, the law is well-settled that class-based, invidiously discriminatory animus must be present to state a cause of action pursuant to 42 U.S.C. §§ 1985(2) & 1985(3). Rutledge v. Arizona Board of Regents, supra.

2. The courts below fully considered and correctly decided the issues raised.

Petitioners' basic justification for acceptance of review by this Court is that they disagree with the decisions rendered by the District Court and the Court of Appeals. Those courts both decided that based upon the

facts pleaded by Petitioners, there was no federal cause of action cognizable under 42 U.S.C. § 1983, or 42 U.S.C. § 1985. A brief review of those issues, and their resolution by the lower courts, demonstrates that Petitioners' case was considered fully and decided correctly.

Reviewing the allegations as they relate to the Respondents Jones, the issue under Petitioners' 42 U.S.C. § 1985 claim was whether Petitioners could demonstrate that they were victims of a conspiracy to deprive them of equal protection of law, and that the conspiracy was motivated by an invidiously discriminatory racial, or class-based, animus.

In dismissing this claim, both the District Court and the Court of Appeals merely followed the sound reasoning of Griffin v. Breckenridge, supra, as applied by the Ninth Circuit in such cases as Blevins v. Ford, 572 F.2d 1336 (9th Cir. 1978); Briley v. State of California, 564 F.2d 849 (9th Cir. 1977); and Lopez v. Arrowhead Ranches, 523 F.2d 924 (9th Cir. 1975).

In an attempt to create the requisite class-based, invidiously discriminatory animus, Petitioners have alleged that they are members of a class of witnesses subject to police intimidation. However, as recognized by the Court of Appeals, this purported class has no characteristics setting it apart from the remainder of the population and it can only be identified by reference to the alleged acts of others. That is insufficient to state a claim cognizable under 42 U.S.C. § 1985. Lopez v. Arrowhead Ranches, supra.

Petitioners' claim under 42 U.S.C. § 1983 was also carefully considered and properly rejected by both the District Court and the Court of Appeals. Relying primarily on Baker v. McCollan, 443 U.S. 137 (1979), the Court of Appeals held that Petitioner Haas' arrest on a facially valid warrant created no deprivation of a constitutional right. That ruling was entirely consistent with Baker v. McCollan, supra, which held that an arrest on a facially valid warrant, even if it was later determined that

the warrant was improperly issued, does not state a cause of action pursuant to 42 U.S.C. § 1983.

## CONCLUSION

In summary, Petitioners have failed to demonstrate any cogent reason for the issuance of a Writ of Certiorari to allow review of this case. Not one of the considerations outlined in Rule 17 is present. Neither can Petitioners show that their case was not fully considered and correctly decided on the merits. For the reasons set forth herein, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted

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